

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

MARLON LORENZO BROWN.

Case No. 3:24-cv-00184-MMD-CLB

Plaintiff.

ORDER

MICHAEL FLYMAN, *et al.*,

Defendants.

I. SUMMARY

Pro se Plaintiff Marlon Lorenzo Brown, who is an inmate in the custody of the Nevada Department of Corrections, filed a petition for removal of his state court action to this Court. (ECF No. 1-1.) Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate Judge Carla L. Baldwin (ECF No. 6), recommending the Court grant Plaintiff’s application to proceed *in forma pauperis* (“IFP”) (ECF No. 1), deny the petition for removal (ECF No. 1-1 at 1-5), and dismiss the complaint (*id.* at 7-17). Plaintiff filed an objection to the R&R (ECF No. 8), as well as a motion for leave to amend the complaint (ECF No. 7). Because the Court agrees with Judge Baldwin’s analysis and separately finds that the Court lacks subject matter jurisdiction over this action under the *Rooker-Feldman* doctrine, the Court will adopt the R&R, grant the IFP application, deny the petition for removal, dismiss the complaint, and deny the motion for leave to amend as moot.

II. DISCUSSION

"[D]e novo review of the magistrate judges' findings and recommendations is required if, but *only if*, one or both parties file objections to the findings and recommendations." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003). Because Plaintiff does not object to Judge Baldwin's recommendation to grant the IFP

1 application, the Court finds that Judge Baldwin did not clearly err and adopts that
 2 recommendation. Because Plaintiff objects to Judge Baldwin's recommendation to deny
 3 the petition for removal, the Court conducts a de novo review of that analysis.

4 Judge Baldwin recommends denying the petition for removal because an action in
 5 state court may be removed to federal court by a defendant, but not a plaintiff, like Brown
 6 here. (ECF No. 6 at 3.) The Court agrees and will adopt the recommendation, as 28 U.S.C.
 7 § 1441(a) plainly states that a state court action "may be removed by the defendant or the
 8 defendants," and 28 U.S.C. §1446(a) refers to "[a] defendant or defendants desiring to
 9 remove" a state court action. In his Objection, Plaintiff argues that the R&R does not
 10 address Plaintiff's reason for seeking removal—that the state court erroneously refused to
 11 award him damages for his loss of liberty because of the judge's bias, that the Nevada
 12 Supreme Court rejected Plaintiff's argument of bias and affirmed the state court ruling,
 13 and that Plaintiff now seeks federal intervention for the state court judge's decision and
 14 conduct. (ECF No. 8 at 2-3.) The Court rejects Plaintiff's argument because his reason for
 15 removal does not change the fact that removal is only proper by a defendant. Moreover,
 16 Plaintiff's stated reason for removal makes clear that the Court lacks subject matter
 17 jurisdiction over this action under the *Rooker-Feldman* doctrine. See *Scholastic Ent., Inc.*
 18 v. *Fox Ent. Grp., Inc.*, 336 F.3d 982, 985 (9th Cir. 2003) (finding a court may dismiss claims
 19 *sua sponte* for lack of subject matter jurisdiction without violating due process).

20 The *Rooker-Feldman* doctrine states that federal district courts may not exercise
 21 subject matter jurisdiction over a de facto appeal from a state court judgment.¹ See *Rooker*
 22 v. *Fid. Tr. Co.*, 263 U.S. 413, 414-17 (1923); *D.C. Ct. of Appeals, et al. v. Feldman*, 460
 23 U.S. 462, 482 (1983). The doctrine applies when "a federal plaintiff asserts as a legal
 24 wrong an allegedly erroneous decision by a state court, and seeks relief from the state
 25 court judgment based on that decision." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

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 28 ¹State court litigants may only achieve federal review of state court judgments by
 filing a petition for a writ of certiorari in the Supreme Court of the United States. See *D.C. Ct. of Appeals, et al. v. Feldman*, 460 U.S. 462, 482 (1983).

1 As part of a refusal to hear a forbidden de facto appeal, a federal district court “must also
 2 refuse to decide any issue raised in the suit that is ‘inextricably intertwined’ with an issue
 3 resolved by the state court in its judicial decision.” *Doe v. Mann*, 415 F.3d 1038, 1042 (9th
 4 Cir. 2005) (quoting *Noel*, 341 F.3d at 1158). To determine if an action operates as a de
 5 facto appeal, the court “pay[s] close attention to the relief sought by the federal-court
 6 plaintiff.” *Cooper v. Ramos*, 704 F.3d 772, 777-78 (9th Cir. 2012) (quoting *Bianchi v.*
 7 *Rylaarsdam*, 334 F.3d 895, 990 (9th Cir. 2003)). Where the form of relief would constitute
 8 a reversal or “undoing of the prior state-court judgment,” *Rooker-Feldman* dictates that the
 9 lower federal courts lack jurisdiction. *Bianchi*, 334 F.3d at 900 (internal quotations and
 10 citations omitted).

11 Here, Plaintiff asks the Court to address arguments that were already presented to
 12 and rejected by the Eighth Judicial District Court of Nevada and the Nevada Supreme
 13 Court and to essentially reverse their rulings on Plaintiff’s damages. (ECF No. 8 at 2-3.)
 14 This requested relief constitutes a forbidden de facto appeal of multiple state court orders.
 15 See *Noel*, 341 F.3d at 1163 (“It is a forbidden de facto appeal under *Rooker-Feldman*
 16 when the plaintiff in federal district court complains of a legal wrong allegedly committed
 17 by the state court, and seeks relief from the judgment of that court.”). To provide Plaintiff
 18 with the relief he seeks would require this Court to analyze the state courts’ alleged legal
 19 errors and undo the original order and the appeal, which is squarely barred by *Rooker-*
 20 *Feldman*. Moreover, to the extent Plaintiff seeks other related relief, the Court may not
 21 review any issues “inextricably intertwined” with issues addressed by the state court. See
 22 *Doe*, 415 F.3d at 1042-43. Accordingly, the *Rooker-Feldman* doctrine deprives the Court
 23 of subject matter jurisdiction over Plaintiff’s claims, so the Court will deny the petition for
 24 removal, dismiss the complaint, and deny as moot the motion for leave to amend the
 25 complaint.²

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28 ²Aside from its mootness, in any event, Plaintiff’s proposed amended complaint would likely fail for other reasons, such as being barred by the *Rooker-Feldman* doctrine for similar reasons as discussed above.

1 **III. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several cases
3 not discussed above. The Court has reviewed these arguments and cases and determines
4 that they do not warrant discussion as they do not affect the outcome of the issues before
5 the Court.

6 It is therefore ordered that Judge Baldwin's Report and Recommendation (ECF No.
7 6) is adopted.

8 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
9 No. 1) is granted.

10 It is further ordered that Plaintiff is not required to pay an initial installment fee.
11 Nevertheless, the full filing fee is still due, even if this action is dismissed or is otherwise
12 unsuccessful, under U.S.C. § 1915, as amended by the Prison Litigation Reform Act. The
13 movant herein is permitted to maintain this action to conclusion without the necessity of
14 prepayment of fees or costs or the giving of security therefore. The order granting IFP
15 status does not extend to the issuance and/or service of subpoenas at government
16 expense.

17 It is further ordered that the Nevada Department of Corrections pay to the Clerk of
18 Court 20% of the preceding month's deposits to the account of Marlon Lorenzo Brown,
19 #1209358 (in months that the account exceeds \$10.00) until the full \$350.00 filing fee has
20 been paid for this action.

21 The Clerk of Court is directed to file Plaintiff's complaint (ECF No. 1-1 at 7-17).

22 It is further ordered that Plaintiff's complaint (ECF No. 1-1 at 7-17) is dismissed.

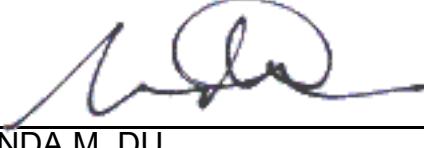
23 It is further ordered that Plaintiff's petition for removal (ECF No. 1-1 at 1-5) is
24 denied.

25 It is further ordered that Plaintiff's motion for leave to amend the complaint (ECF
26 No. 7) is denied as moot.

27 The Clerk of Court is further directed to close this case.

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1 DATED THIS 30th Day of May 2024.
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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE